



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0907]

RIN 1625-AA11

Regulated Navigation Area; Upper Mississippi River between mile 0.0 and 109.9; Cairo, IL to Chester, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) for all waters of the Upper Mississippi River (UMR) between miles 0.0 and 109.9. This RNA is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with subsurface rock removal in the Upper Mississippi River. Any deviation from the conditions and requirements put into place are prohibited unless specifically authorized by the cognizant Captain of the Port (COTP) Ohio Valley or his designated representatives.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until April 12, 2014. For the purposes of enforcement, actual

notice will be used from the date the rule was signed, November 4, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0907]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Dan McQuate, U. S. Coast Guard; telephone 270-442-1621, e-mail daniel.j.mcquate@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:
Table of Acronyms

AIS	Automated Information System
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
MM	Mile Marker
MSU	Marine Safety Unit
M/V	Motor Vessel
NPRM	Notice of Proposed Rulemaking
RIAC	River Industry Action Committee
UMR	Upper Mississippi River
USACE	United States Army Corps of Engineers

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. On July 18, 2013 the US Army Corps of Engineers (USACE) St. Louis District contacted Coast Guard Marine Safety Unit (MSU) Paducah, KY with notification that a contract had been issued for subsurface rock removal in the Thebes, IL area. The rock

removal project is required to assist navigation through the channel during certain low water and river conditions and can only be completed during certain environmental conditions. The environmental window for the rock removal project is November 1, 2013 to April 12, 2014, and the project was not expected to require additional vessel restrictions and requirements possibly leading to river closures as the work areas were on the far outer edge, or totally outside of the navigation channel. On August 27, 2013, MSU Paducah participated in a conference call with USACE St. Louis and River Industry Action Committee (RIAC) leadership concerning the rock removal project. RIAC is an association of companies and organizations who are stakeholders in the commercial industry on the inland rivers. During this call, based on low water, river conditions, industry use and concerns, the Coast Guard determined that implementing vessel restrictions and requirements and possible river closures may be necessary when the rock removal contractor is working in specific locations for safety purposes. The RIAC leadership participating on this call agreed that these safety measures are necessary. Similar safety measures were implemented by the Coast Guard for this area from December

1, 2012 through March 31, 2013 based on low water conditions (77 FR 15850).

On October 17, 2013, MSU Paducah personnel attended a meeting at the USACE Jackson, MO field office with USACE personnel, the contractor for this project, and numerous RIAC member companies. During this meeting the contractor for the project expressed their safety concerns and referred to a clause in their contract that they interpreted as allowing for river closures necessary for safety reasons. The Coast Guard determined that the best course of action is for the contractor to initiate work with normal vessel traffic transiting to determine if/when and what additional safety measures are required during the rock removal project. These safety measures may include closures and/or vessel restrictions and requirements, including one-way traffic, tow size, designated vessel reporting locations, etc. as necessary when the contractor is working in certain locations for safety purposes. In addition, use of the Automated Information System (AIS) will be vital for the Coast Guard to maintain situational awareness while the restrictions and requirements are in place and to help facilitate the clearing of vessel queues following river closures. These vessel restrictions and requirements are vital to maintaining safe navigation on

the Upper Mississippi River (UMR) during the rock removal project and to resuming safe navigation as quickly as possible following river closures. As a result, the Coast Guard is implementing the RNA to protect mariners and vessels. The timing of the actual notice of definitive need for vessel restrictions does not allow for the time required to complete the NPRM process. Immediate action establishing this RNA is needed to protect persons and property from the safety hazards associated with the subsurface rock removal on the Upper Mississippi River. Delaying the effective date for this RNA to complete the NPRM process would be contrary to the public interest and would unnecessarily delay the rock removal project. Broadcast Notices to Mariners (BNM) and information sharing with RIAC will update mariners of the restrictions, requirements, and enforcement periods throughout the entire RNA, or at specific areas within the RNA.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Providing 30 days notice and delaying its effective date would be contrary to public interest because immediate action is needed to protect persons, property and infrastructure from the potential damage and

safety hazards associated with subsurface rock removal operations on the UMR.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define RNA's.

The purpose of this RNA is to protect persons and vessels while subsurface rock removal operations are ongoing on the UMR from mile 38.0 to mile 46.0. The removal operations pose significant safety hazards to vessels and mariners operating on the UMR. Establishing the RNA to extend from mile 0.0 to mile 109.9 is necessary for the Coast Guard to maintain situational awareness of vessels operating in the UMR, and, at the request of RIAC, assist in facilitating the clearing of vessel queues following closures or restrictions of the river from mile 38.0 to mile 46.0. For these reasons, the Coast Guard is establishing the RNA to implement various waterway operational controls, including specific restrictions and requirements, for vessels transiting between mile 0.0 and 109.9 on the UMR.

C. Discussion of the Temporary Final Rule

The Coast Guard is establishing a temporary RNA for all vessel traffic on the UMR between mile 0.0 and mile 109.9, extending the entire width of the river. Within this RNA various restrictions and requirements may be put into effect based on the actual or planned subsurface rock removal operations between mile 38.0 and mile 46.0. These restrictions and requirements will be the minimum necessary to protect persons, property, and infrastructure from the potential hazards associated with low water and subsurface rock removal and may include, but are not limited to, river closures, tow size, tow configuration, vessel/barge draft, assist vessels, speed, vessel traffic reporting, hours of transit, one way traffic, and the use of AIS if fitted onboard a vessel. Enforcement times and specific restrictions and requirements will be announced via Broadcast Notice to Mariners (BNM), through outreach with the RIAC, the Local Notice to Mariners (LNM) and through other public notice. Any deviation from the requirements put into place are prohibited unless specifically authorized by the COTP Ohio Valley, or a designated representative. Deviations for the specific restrictions and regulations will be considered and reviewed on a case-by-case basis. The COTP Ohio Valley may be contacted by

telephone at 1-800-253-7465 or can be reached by VHF-FM channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule establishes a temporary RNA for vessels on all waters of the UMR from mile 0.0 to mile 109.9. Notifications of enforcement times of control measures and requirements put into effect for the entire RNA, or specific areas within the RNA, will be communicated to the marine community via BNM, through outreach with RIAC, and through Local Notice to Mariners (LNM). The impacts on navigation will be limited to ensuring the safety of mariners and vessels

associated with hazards presented by USACE contractor operations involving subsurface rock removal, and the safe and timely resumption of vessel traffic following any river closures or restrictions associated with subsurface rock removal operations. Operational controls under this RNA will be the minimum necessary to protect mariners, vessels, the public, and the environment from known or perceived risks.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the UMR, from November 4, 2013 to April 12, 2014. This RNA will not have a significant economic impact on a substantial number of small entities because this rule allows for the intermittent passing of

vessels. Traffic in this area is limited to almost entirely recreational vessels and commercial towing vessels subject to noticed restrictions and requirements.

Notifications to the marine community will be made through BNM, LNM, and communications with RIAC. Notices of changes to the RNA and effective times will also be made.

Deviation from the restrictions may be requested from the COTP or designated representative and will be considered on a case-by-case basis.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each

agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of

people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of

Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination will be made available as indicated under the ADDRESSES section.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1,

6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. A new temporary § 165.T08-0907 is added to read as follows:

§ 165.T08-0907 Regulated Navigation Area; Upper Mississippi River between mile 0.0 and 109.9, Cairo, IL to Chester, IL.

(a) Location. The following area is a regulated navigation area (RNA): all waters of the Upper Mississippi River between mile 0.0 and mile 109.9, Cairo, IL to Chester, IL, extending the entire width of the river.

(b) Effective dates. This RNA is effective and enforceable with actual notice from November 4, 2013 through April 12, 2014.

(c) Regulations. (1) The Captain of the Port (COTP) Ohio Valley may prescribe, for all or specific portions of the RNA, periods of enforcement and minimum operational requirements necessary to preserve safe navigation on the Upper Mississippi River during subsurface rock removal operations, including, but not limited to, the required use of assist vessels, vessel traffic reporting, and Automatic Information Systems when fitted onboard a vessel; and restrictions on the following:

- (i) Tow size;
- (ii) Tow configuration;

- (iii) Vessel/barge draft;
- (iv) Speed;
- (v) Under keel clearance;
- (vi) Hours of transit; and
- (vii) One way traffic.

(2) All persons and vessels must comply with any requirement prescribed under paragraph (c)(1) of this section.

(3) Persons or vessels may request an exception from any requirement prescribed under paragraph (c)(1) of this section from the COTP Ohio Valley or a designated representative who may be a commissioned, warrant, or petty officer of the Coast Guard. The COTP Ohio Valley may be contacted by telephone at 1-800-253-7465 or on VHF-FM channel 16.

(d) Enforcement. The COTP Ohio Valley will notify the public of the specific requirements prescribed under

paragraph (c)(1) of this section and of the times when those requirements will be enforced or when enforcement will be suspended, using means designed to ensure maximum effectual notice including, but not limited to, broadcast notices to mariners (BNM) and communications through the River Industry Action Committee.

Dated: November 4, 2013

K. S. COOK
Rear Admiral, U. S. Coast Guard
Eighth District Commander

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